IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11656 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD COTTON MILLS CO.LTD.

Versus

LAXMANBHAI MAGANBHAI

Appearance:

M/S TRIVEDI & GUPTA for Petitioner No. 1-2

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/09/2001

ORAL JUDGEMENT

1. Rule. Mr.Mishra waives service of rule on behalf of the respondent.

With the consent of parties, the matter is heard today.

2. The respondent-workman had filed an application, which was numbered as (T) Application No.367 of 1990 before the Labour Court, Ahmedabad by resorting to the provisions of Sections 78 and 79 of the B.I.R. Act. The Labour Court, by its order dated 18.2.1999, rejected the said application without adjudicating the same on merits on the ground that the Court has no jurisdiction to adjudicate the said dispute.

3. The said order was carried in appeal by the respondent-workman, which was numbered as Appeal (IC) No.8 of 1999. The appellate court came to the conclusion that the Labour Court has not properly appreciated the provisions of the Sick Industrial Companies Act, and the Rules. The appellate court came to the conclusion that the application was maintainable and, therefore, ultimately, the appeal was allowed. The appellate court set aside the order of the Labour Court, but at that stage, instead of remanding the matter for further adjudication to the Labour Court, the appellate court also considered the case on merits and passed an order of reinstatement by setting aside the removal order of the workman dated 16.6.1990. The appellate court also came to the conclusion that the concerned workman will be entitled to full back wages for the period between 16.6.1990 and 10.2.1992 and the concerned workman was ordered to be reinstated on his original post.

4. At the time of hearing of this petition, it was argued by the learned Advocate for the petitioner that the Labour Court, while rejecting the main application of the concerned workman, has not adjudicated the claim of the workman on merits nor the petitioner-employer had also submitted their arguments on merits as the petition was rejected on the ground that it was not maintainable. When the Appellate Court came to the conclusion that the application was maintainable before the Labour Court, it should have remanded the matter to the Labour Court, instead of adjudicating the same on merits and reinstating the workman with full back wages.

5. Mr.Mishra, learned Advocate appearing for the workman, however, argued that, on merits, the respondent-workman is having very good case as it was not a case for dismissal. He, however, conceded that the Labour Court, while rejecting the original application, has not decided on merits and no arguments were advanced by the parties on the merits before the Labour Court. In my view, when the appellate court came to the conclusion that the application before the Labour Court was maintainable, instead of adjudicating the matter on

merits, the appellate court should have sent it back to the Labour Court for decision on merits. The Labour Court is the original authority to decide the dispute and as an original authority, the Labour Court was required to appreciate the evidence on record and was required to pass appropriate order on the merits of the case. The parties have not argued their case on merits since it was rejected only on the preliminary ground of jurisdiction. In view of the aforesaid circumstances, the appellate court was supposed to remand the matter for adjudication on merits. That has not been done. The appellate court should not have adjudicated the matter on merits on its own.

6. In view of the aforesaid circumstances, the order of the appellate court is set aside. The matter is remanded to the Labour Court, Ahmedabad. The original application given by the employee, which was numbered as (T) Application No.367 of 1990 is restored on file of the Labour Judge, Ahmedabad. It is clarified that the said application is maintainable before the Labour Court and the Labour Court may now dispose of the said Application on its own merits after hearing both the sides. Since the dispute is of 1990, the Labour Court is directed to dispose of the same latest by 30th November, 2001.

Office is directed to send the writ of this Court forthwith. Advocates of both the sides have assured the Court that they will not take any undue adjournment from the Labour Court and they will cooperate in the hearing of the said case.

7. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

4th September, 2001 (P.B. Majmudar, J.)

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(apj)